

Calendar No. 361

113TH CONGRESS }
2d Session }

SENATE

{ REPORT
{ 113-150

IDAHO WILDERNESS WATER RESOURCES PROTECTION ACT

APRIL 10, 2014.—Ordered to be printed

Ms. LANDRIEU, from the Committee on Energy and Natural
Resources, submitted the following

R E P O R T

[To accompany H.R. 876]

The Committee on Energy and Natural Resources, to which was referred the bill (H.R. 876) to authorize the continued use of certain water diversions located on National Forest System land in the Frank Church-River of No Return Wilderness and the Selway-Bitterroot Wilderness in the State of Idaho, and for other purposes, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE

The purpose of H.R. 876 is to authorize the continued use of certain water storage, transport, or diversion facilities that are located on National Forest System land in the Frank Church-River of No Return Wilderness and the Selway-Bitterroot Wilderness in the State of Idaho.

BACKGROUND AND NEED

The Selway-Bitterroot Wilderness and the adjacent Frank Church-River of No Return Wilderness are two National Forest wilderness areas in the State of Idaho. Located within these wilderness areas are several water facilities, including facilities for hydro-power development, irrigation, and domestic water uses. These facilities are privately operated and predate the establishment of the Selway-Bitterroot Wilderness in 1964 and the Frank Church-River of No Return Wilderness in 1980.

Because the legislation establishing these wildernesses did not address these preexisting water facilities it is necessary to clarify

that the owners of these water facilities can continue to operate and maintain them within the wilderness areas. H.R. 876 requires the Secretary of Agriculture to issue special use permits for those facilities if certain conditions are met.

LEGISLATIVE HISTORY

H.R. 876, sponsored by Representative Simpson, was ordered reported by the House Committee on Natural Resources on April 24, 2013 (H. Rept. 113–76) and passed the House of Representatives by a vote of 398–0 on June 17, 2013. A hearing was held on the measure by the Subcommittee on Public Lands, Forests, and Mining on July 30, 2013. On November 21, 2013, the Committee ordered H.R. 876 favorably reported.

Representative Simpson introduced similar legislation in the 112th Congress, H.R. 2050, which passed the House of Representatives by a voice vote on April 26, 2012.

Similar legislation, H.R. 4474, sponsored by Representatives Minnick and Simpson, passed the House of Representatives in the 111th Congress by a vote of 415–0 on January 27, 2010. Companion legislation, S. 2966, was introduced by Senators Risch and Crapo. The Subcommittee on Public Lands and Forests held a hearing on H.R. 4474 and S. 2966 on March 10, 2010 (S. Hrg. 111–565). The Committee on Energy and Natural Resources considered the bill at its business meeting on June 16, 2010, and ordered H.R. 4474 favorably reported without amendment at its business meeting on June 21, 2010 (S. Rept 111–277).

COMMITTEE RECOMMENDATION

The Senate Committee on Energy and Natural Resources, in open business session on November 21, 2013, by a voice vote of a quorum present, recommends that the Senate pass H.R. 876.

SECTION-BY-SECTION ANALYSIS

Section 1 provides the short title, the “Idaho Wilderness Water Resources Protection Act.”

Section 2(a) directs the Secretary of Agriculture (Secretary) to issue special use permits to the owners of a water storage, transport, or diversion facilities that are located on National Forest System lands in the Frank Church-River of No Return Wilderness and the Selway-Bitterroot Wilderness in Idaho. A permit for the continued operation, maintenance, and reconstruction of a facility may only be issued if the Secretary determines that certain conditions have been met.

Subsection (b)(1) requires the Secretary, under a permit issued under this Act, to allow the use of motorized equipment and mechanized transport if the Secretary determines that such use is necessary and the use of non-motorized equipment and non-mechanized transport is impracticable or infeasible. Additionally, the Secretary is directed to preclude the use of a facility for water in excess of the right recognized by the State of Idaho.

Paragraph (2) authorizes the Secretary to require the facilities to be modified or relocated in order to reduce impacts to the wilderness if the beneficial use of water is not impacted and requires that the owners provide a reciprocal right-of-way access across the non-

Federal property, provided they receive market value for this right-of-way. The Secretary is authorized to compensate the owner by granting a reciprocal right-of-way, a reduction of fees, or both.

COST AND BUDGETARY CONSIDERATIONS

The following estimate of costs of this measure has been provided by the Congressional Budget Office:

H.R. 876—Idaho Wilderness Water Resources Protection Act

H.R. 876 would authorize the Secretary of Agriculture to issue permits for land owners with valid water rights under state law to continue using certain water storage, transport, and diversion facilities in the Frank Church-River of No Return Wilderness and the Selway-Bitterroot Wilderness of Idaho. According to the Forest Service, any costs to process the permits would be paid by the permit holders. Because the legislation would affect direct spending (through the collection and spending of receipts), pay-as-you-go procedures apply; however, CBO estimates that enacting H.R. 876 would have an insignificant impact on net direct spending. Enacting the legislation would not affect revenues.

H.R. 876 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would not affect the budgets of state, local, or tribal governments.

On May 3, 2013, CBO transmitted a cost estimate for H.R. 876, the Idaho Wilderness Water Resources Protection Act, as ordered reported by the House Committee on Natural Resources on April 24, 2013. The two versions of the legislation are similar, as are CBO's estimates.

The CBO staff contact for this estimate is Aurora Swanson. The estimate was approved by Theresa Gullo, Deputy Assistant Director for Budget Analysis.

REGULATORY IMPACT EVALUATION

In compliance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact which would be incurred in carrying out H.R. 876.

The bill is not a regulatory measure in the sense of imposing Government-established standards or significant economic responsibilities on private individuals and businesses.

No personal information would be collected in administering the program. Therefore, there would be no impact on personal privacy.

Little, if any, additional paperwork would result from the enactment of H.R. 876, as ordered reported.

CONGRESSIONALLY DIRECTED SPENDING

H.R. 876, as reported, does not contain any congressionally directed spending items, limited tax benefits, or limited tariff benefits as defined in rule XLIV of the Standing Rules of the Senate.

EXECUTIVE COMMUNICATIONS

The testimony provided by the Forest Service at the July 30, 2013, Subcommittee on Public Lands, Forests, and Mining hearing on H.R. 876 follows:

STATEMENT OF LESLIE WELDON, DEPUTY CHIEF, NATIONAL
FOREST SYSTEM, U.S. FOREST SERVICE, DEPARTMENT OF
AGRICULTURE

Mr. Chairman, and Members of the Committee, thank you for the opportunity to share the Administration's views on H.R. 876, the "Idaho Wilderness Water Resources Protection Act."

The U.S. Forest Service supports H.R. 876. The bill authorizes the issuance of a special use permit for the continued use of water storage, transport, or diversion facility located on National Forest System lands in the Frank Church-River of No Return Wilderness and the Selway-Bitterroot Wilderness in Idaho. The permits will only be issued to the water system owners of the water systems identified within these two wilderness areas and if certain conditions are met. We would like to work with the committee and the sponsor to locate on a map the water facilities authorized under this bill.

Currently, there are over 20 water developments within the Frank Church-River of No Return and Selway-Bitterroot Wilderness Areas that predate establishment of the wilderness, in some cases by decades.

These developments include hydropower developments, irrigation, and domestic water uses. The legislation establishing both wilderness areas did not address these pre-existing water developments. H.R. 876 would direct the Forest Service to issue special use authorizations, if the Secretary makes the following determinations: the facility was in existence when the wilderness area on which the facility is located was designated as part of the National Wilderness Preservation System; the facility has been in substantially continuous use to deliver water for the beneficial use on the owner's non-Federal land since the date of designation; the owner of the facility has a valid water right for use of the water on the owner's non-Federal land under Idaho State law, with a priority date that pre-dates the date of designation; and it is not practicable or feasible to relocate the facility outside the wilderness and achieve the continued beneficial use of water on non-Federal land. We understand that the bill does not create any rights beyond what is provided in the special use permit and that both maintenance responsibilities and liabilities continue with the permit holder, and not the Federal government.

This concludes my prepared statement and I would be pleased to answer any questions you may have.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, the Committee notes that no changes in existing law are made by H.R. 876, as ordered reported.